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IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CLAYTON BLEHM, dba FDC INVESTMENTS, INC. Plaintiff, v. BETSY MCINTYRE, an individual; QUICKSILVER, INC., a Delaware Corporation; and DOES1-50, inclusive, Defendants.	Case No. 08-CV-1358-BTM-NLS DEFENDANT BETSY MCINTYRE'S EX PARTE APPLICATION FOR EXTENSION OF TIME TO RESPOND TO COMPLAINT Removed from San Diego County, California Superior Court Case No. 37-2008-00084761-CU-FR-CTL

Defendant Betsy McIntyre[1] applies to this Court for an extension of time to respond to the complaint recently removed to this Court from the California Superior Court for San Diego County.

[1] Although Betsy McIntyre is named as a defendant, because the allegations in the complaint sound in tort, it appears that the proper party is the United States and not Betsy McIntyre. 28 U.S.C. § 2679(d)(1).

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1. On May 28, 2008, a civil action designated as a Complaint For Damages Fraud and Conspiracy was filed in the California Superior Court for the County of San Diego. The plaintiff alleges that Ms. McIntyre and Defendant Quicksilver, Inc. conspired to defraud the plaintiff. The plaintiff seeks damages for the alleged violations.

2. Betsy McIntyre has not been served in this action. Because Defendant McIntyre is being sued as a result of her conduct as a federal officer, FED. R. CIV. P. 4(i)(3) requires that the summons and complaint be served on Defendant McIntyre, and that complaint and summons be served on the United States Attorney for the Southern District of California and the Attorney General. Neither the United States Attorney's Office for the Southern District of California nor the United States Attorney General has received or been served a Summons or Complaint from the Plaintiff in the above-captioned action. The Department of Justice received notice of this action from the Internal Revenue Service on or about June 26, 2008.

3. Fed. R. Civ. P. 81(c) requires that a response to a complaint be filed within 20 days of receipt of the complaint and within 5 days of the removal of the action to District Court, whichever is longer. Thus, if the pleading had been filed originally in this court, Ms. McIntyre would have had 60 days from the date of service to respond. Fed. R. Civ. P. 12(a)(3). Ms. McIntyre requests for good cause shown, a reasonable amount of time, until August 28, 2008, to file an answer or otherwise respond to the Complaint.[2]

4. The week of June 28, 2008, undersigned counsel contacted opposing counsel regarding this motion. All of the contacted parties indicated that they had no objections to the relief requested.

5. A proposed Order is provided herewith.

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[2] In lieu of a response and in accordance with 28 U.S.C. § 2679(d)(1), the United States may effectuate a substitution as the party defendant.

DATED this 31st day of July, 2008.

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/s/ Lauren Castaldi
LAUREN M. CASTALDI
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of July, 2008, I mailed by U.S. Postal Service the foregoing to the following:

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